IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 10478 of 2004

Between:

R. Sudharshanam S/o. R. Devadas,
R/o. H.No. 832-B, BHEL Quarters (Township) R.C.Puram, Hyd.

..... PETITIONER

AND

1. The Principal Secretary to Govt., Labour Employment Training

and Factories (Lab-I), Secretariat, Hyderabad.
2. The Regional Manager, APSRTC, Krishna Devaraya Region,

Cuddapah, Cuddapah District.
3. The Depot Manager, APSRTC, Kadiri Depot,

Kadiri, Ananatapur District.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in not referring the dispute to the concerned Hon'ble Labour Court or Tribunal for adjudication as required under section 12 (5) of Industrial Disputes Act as illegal, arbitrary, unjust and set aside the proceedings No. 3434/Lab.I/A2/2001 dated 15.2.2002, and consequently direct the 1st respondent to refer the dispute to the concerned Hon'ble Labour Court or Tribunal for adjudication of the dispute.

Counsel for the Petitioner: MR.G.RAVI MOHAN

Counsel for the Respondents 1: GP FOR LABOUR

Counsel for the Respondent No.2 AND 3: Mr. P.Vinayaka Swamy

The Court made the following:

ORDER:

Heard both sides and at their request the writ petition is taken up for disposal.

The petitioner, who is a worker, files the present Writ Petition seeking Writ of *Mandamus* declaring the action of the 1st respondent in not referring the dispute to the concerned Labour Court or Tribunal for adjudication as required under Section 12 (5) of the Industrial Disputes Act and to set aside the proceedings No.3434/Lab.I/A2/2001, dated 15.02.2002, and consequently direct the first respondent to refer the dispute to the concerned Labour Court for adjudication.

The case of the petitioner is that he was initially appointed as a Coach Builder. The petitioner while performing the duties as such, fell sick due to serious physical ailment for the period from 3.11.1986 to 27.11.1986 and as a result of which he could not attend the duties. Therefore, he was issued by a show cause notice by the respondents on 4th March, 1987 and the petitioner filed the explanation. However, without properly considering the explanation of the petitioner, his services were terminated by proceedings dated 26.06.1987. Initially the Union sought a reference, but as there was delay, the same was not entertained and for the said delay the petitioner cannot be found fault with and in fact as there is no limitation prescribed under Section 2(k)of the Industrial Disputes Act, denial of reference is not justified.

In support of the above contention, the learned counsel appearing for the petitioner placed reliance in **BIDYADHAR MOHAPATRA AND OTHERS v DISTRICT LABOUR OFFICER CUM CONCILIATION OFFICER, ROURKELA AND OTHERS**, wherein Supreme Court of India considering the provisions under Section 10 of the Industrial Disputes Act *vis-a-vis* the provisions of the Limitation Act held that the delay cannot be a ground for rejection of any such application, since the provisions of Limitation Act have no application.

Having considered the submissions made and also on perusal of the material on

record and especially in view of the fact that the present relief is only with regard to making a reference to the Labour Court, I deem it expedient not go in to the merits of the case. However, it is suffice to refer the matter to the Labour Court in view of the aforesaid principle as laid down by the Supreme Court of India. It will be open for the contesting parties herein to raise proper objections before the Labour Court in regard to the delay and laches, which shall be dealt with independently and disposed of on its own reference.

The Writ Petition is accordingly allowed. The impugned order dated 15.02.2002 is set aside. The respondent no.1 is directed to refer the dispute to the concerned Labour Court for proper adjudication. The entire exercise shall be completed within one month from the date of receipt of the order.

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14-03-2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, The Chief Justice on this the Monday the Fourteenth day of March, two thousand and five.

To

1. The Principal Secretary to Govt., Labour Employment Training

and Factories (Lab-I), Secretariat, Hyderabad.
2. The Regional Manager, APSRTC, Krishna Devaraya Region,

Cuddapah, Cuddapah District.
3. The Depot Manager, APSRTC, Kadiri Depot,

Kadiri, Ananatapur District.

4. 2 CCs to G.P. for Labour, High Court Buildings, Hyderabad

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5. 2 CD copies.